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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,543

01/31/2006

Richard Alasri

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12/12/2008

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EXAMINER

ASDJODI, MOHAMMAD REZA

ART UNIT

PAPER NUMBER

1796

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,543	<b>Applicant(s)</b> ALASRI, RICHARD	
	<b>Examiner</b> MOHAMMAD R. ASDJODI	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

*The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:*

***(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.***

Claims 1-12, and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al. (US 5,234,719) in view of Beerse et al. (US 6,217,887 B1).

Regarding claims 1-5, and 7-8, Richter et al. teach a food sanitizing composition comprising: C<sub>1</sub>- C<sub>8</sub> monocarboxylic acids such as octanoic acid by the amount of 0.1-35%; [C.6, L.10-15], alkyl alcohols such as ethanol, propanol by the amount of 0.04-40%; [C.6, L.60-67 & C.8, L.45-51].

Richter et al. do not teach sulfur containing salt in their composition. However Beerse et al. teach an anti microbial and sanitizing composition comprising sulfur salt by the amount of 0.001- 5%; [C4. L.60-61]. Beerse et al. and Richter et al. are analogous art because they are from the same field of endeavour, that of sanitizing and anti-microbial compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to add the sanitizing ingredient of Beerse et al. to Richter et al.'s composition, with the motivation of fortifying antibacterial properties of Richter et al.'s compound. Sulfur containing compounds are known for their antibacterial characteristics, as evidenced by Beerse et al.

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Regarding claims 6, and 9-12, Richter et al. teach a food sanitizing composition comprising lactic acid; [C.8, L.55], emollients such as alkylene glycol, sorbitol, or propylene glycol; [C.9, L.66, C.7, L.4-8 & C.8, L.42], and anionic and non-ionic surfactants; [C.7, L.1-35].

Regarding claims 25-33, Richter et al. teach a sanitizing method ([C.20, L.56-67]) and a food sanitizing composition which is placed (or loaded) in a wipe with natural (cellulose is most common natural fiber) or synthetic fibers that is a multipurpose sanitizer which also sanitizes different types of surfaces such as households and human skin by contacting; [C.14, L.39-51 & C.5, L.5-10], [C.20, L.56-67 & C.1, L.10-20].

Regarding animal skin and bovine teat, It has been held that a recitation with respect to the manner in which a claimed article, or composition, is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitation, Ex parte Masham, 2 USPQ2d 1647 (1987), [MPEP 2114, R-1].

At the time of invention, it would have been obvious to a person of ordinary skill in the art to be motivated to use this compound on bovine teat for disinfecting purpose.

Claims 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al. (US 5,234,719) in view of Beerse et al. (US 6,217,887 B1).

Regarding claims 13-17, and 19-20, Richter et al. teach a food sanitizing composition comprising: C<sub>2</sub>- C<sub>10</sub> monocarboxylic acids, such as octanoic acid by the amount of 0.1-35%; [C.6, L.10-15], alkyl alcohols such as ethanol, propanol by the amount of 0.04-40%; [C.6, L.60-67 & C.8, L.45-51].

Richter et al. do not teach sulfur containing salt in their composition. However Beerse et al. teach an anti microbial and sanitizing composition comprising antimicrobial sulfur salt by the amount of 0.001- 5%; [42-47 & C4. L.60-61]. Beerse et al. and Richter et al. are analogous art because they are from the same field of endeavour, that of sanitizing and anti-microbial compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to add the sanitizing ingredient of Beerse et al. to Richter et al.'s composition, with the motivation of fortifying antibacterial properties of Richter et al.'s compound. Sulfur containing compounds are known for their sanitizing characteristics.

Regarding claims 18, and 21-24, Richter et al. teach a food sanitizing composition comprising lactic acid; [C.8, L.55], emollients such as alkylene glycol, sorbitol, or propylene glycol; [C.9, L.66, C.7, L.4-8 & C.8, L.42], and anionic and non-ionic surfactants; [C.7, L.1-35].

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richter et al. (US 5,234,719) in view of Beerse et al. (US 6,217,887 B1).

Regarding claim 34, Richter et al. teach a food sanitizing composition comprising: lactic acid by an effective amount, or amount of 0.05-10%; [C.8, L.55, C.19, L.1, Table 6], alkyl alcohols such as ethanol, propanol by the amount of 0.04-40%; [C.6, L.60-67 & C.8, L.45-51].

Richter et al. do not teach sulfur containing salt in their composition. However Beerse et al. teach an anti microbial and sanitizing composition comprising sulfur salt by the amount of 0.001- 5%; [C4. L.60-61]. Beerse et al. and Richter et al. are analogous

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art because they are from the same field of endeavour, that of sanitizing and anti-microbial compositions. At the time of invention, it would have been obvious to a person of ordinary skill in the art to add the sanitizing ingredient of Beerse et al. to Richter et al.'s composition, with the motivation of fortifying antibacterial properties of Richter et al.'s compound. Sulfur containing compounds are known for their antibacterial characteristics, as evidenced by Beerse et al.

### ***Response to Arguments***

Applicant's arguments filed 08/25/08 have been fully considered but they are not persuasive.

A- In response to applicant's argument that: "presence of proton donating agent necessitates absence of fatty acids": the following facts are noteworthy of being examined carefully; I) - Combination of Richter et al. and Beerse et al. is because of anti-bacterial sulfite containing ingredient and is not germane to presence of carboxylic fatty acids or otherwise, in the rise-off cleaning composition of Beerse. In fact in the following paragraph presence of proton donating agents (=electron withdrawing agents) will also activate carboxylic proteins against bacteria. II) - Therefore: In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958

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F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Even in the case of fatty acids being avoided by Beerse et al. this will have no bearing, at all, on Richter et al.'s composition. Utilization of sulfite has no adverse effect on Richter's composition, and it is only a fortification.

B- In response to applicant's arguments against the references individually, ("to piecemeal the claimed invention from prior art": [ page 8: P.3]), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case it should be noted that antibacterial properties of sulfur containing compounds are old and well established knowledge, which could be seen daily in the market, such as sulfur compounds in wines (usually indicated on the bottles) or food products. Therefore out of allegedly 200 antibacterial agents of Beerse et al. one could easily conclude that choice of sulfite is one of the most (if not the most) prevalent one, and not a random choice.

C- In response to applicant's argument that: "use of monocarboxylic acid and sulfite salts gives unexpected results": it is noted that the results correlating to formula 9 do not seem to indicate an extraordinary (or exponentially greater) antibacterial effect, considering the cumulative antibacterial effects of sulfite salts and lactic acid. Any differences between the claimed invention and the prior art may be expected to result in some differences in properties. The issue is whether the properties differ to such an extent that the difference is really unexpected. *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986) (differences in sedative and anticholinergic

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effects between prior art and claimed antidepressants were not unexpected). In re Waymouth, 499 F.2d 1273, 1276, 182 USPQ 290, 293 (CCPA 1974), [MPEP §716.02].

D- Regarding the applicant's argument on dependent claims 6, 9-12, 25-30, 13-24, it is noted that the limitations of these claims are well taught by Richter et al. considering the combination of sulfite salts of Beerse with Richter's composition for the independent claims 1, and 13.

E- Regarding the argument for newly added claim 34, please see office action above.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. M. Reza Asdjodi whose telephone number is



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(571)270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/  
Supervisory Patent Examiner, Art Unit 1796

M. Reza Asdjodi /  
Examiner, Art Unit 1796  
12/02/08